

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th NOVEMBER, 2021

IN THE MATTER OF:

+ **W.P.(CRL) 481/2020**

NEELU SHRIVASTAVA

..... Petitioner

Through: Mr. R.N. Dubey, Mr. Vinay Sharma,
Advocates

versus

STATE & ORS

..... Respondents

Through: Ms. Richa Kapoor, ASC for the State
with Ms. Shivani Sharma and
Ms.Surabhi Katyal, Advocates
Inspector Arun Kumar, SHO/P.S.
GTB Enclave.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This writ petition under Article 226/227 of the Constitution of India has been filed with the following prayers:-

“(i) Issue a writ mandamus of direction of the order of like nature, thereby directing the respondents no. 2 & 3 to restore the investigation of the case FIR No.0003/2019 P.S. GTB Enclave by passing the appropriate action for illegal transfer of the above said case to the respondents no. 4 & 5 by the respondent no.2.

(ii) Issue a writ mandamus of direction of the order of like nature, thereby calling the explanation from the Respondents no. 2 & 3 for non registration of the

F.I.R. under sections 313/328/307/201/342/330/420/468/323/120B IPC apart from the Sections in which the FIR has been registered.

(iii) direct the SHO P.S. GTB Enclave to continue the investigation of the above said case within the jurisdiction of the above said case within the jurisdiction of P.S. GTB Enclave, to restore the investigation with Respondent No.3, registering the FIR with P.S. GTB Enclave, withdrawing the FIR from P.S. Indrapuram, Ghaziabad under the appropriate provisions to ensure the prompt, fair and effective investigation to ensure the fair and effective trial.

(iv) Issue direction to the Respondent NO. 2 to 5 ensure the security the security to the life of the Petitioner and her mother and sister from the accused person in appropriate manner.

(v) Pass any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

2. The facts, in brief, leading to the instant writ petition are as follows:
 - i. It is stated that on 23.07.2019, the Petitioner filed an FIR disclosing an allegation of sexual assault against her that had taken place from 2008 to 2019 at various places, including at GTB Enclave, New Delhi.
 - ii. It is stated that the Petitioner herein had registered a complaint regarding crime of fraud, forgery and conspiracy towards forging marriage certificates, committing rape, getting an abortion done by the accused who forced the Petitioner to ingest poisonous products, and attempted murder.
 - iii. It is stated that in 2008, the petitioner was living in Lajpat

Nagar, Ghaziabad, along with her parents when one of the accused Ajay Shrivastava, who was her aunt's son, forcefully initiated physical relationship with her. It is stated that initially on account of their familiar relationship, the Petitioner did not take any legal action against him. However, despite knowing that the Petitioner was his sister, Ajay tortured her physically, mentally and ruined her entire career. It is stated that when Ajay's mother went to live at the Petitioner's Kanpur residential address, Ajay raped the petitioner for the first time.

iv. It is stated that when the Petitioner insisted on registering a police complaint against Ajay and his family, then Ajay, and co-accused Anil (brother of Ajay), with the help of their sister, Seema (also a co-accused) poured kerosene on the Petitioner and set her on fire. However, when they realised that the same could lead to the Petitioner's death, they put off the fire. However, burn marks as a result of this incident are still present on the internal and external organs of the Petitioner's body. It is stated that the Petitioner was also threatened by Anil, who informed her that he had political connections and if she tried to register a police complaint, they would not let her remain alive.

v. It is stated that Anil as well as the wife of Ajay (Garima) threatened the Petitioner and told her that she would have to remain as mistress/wife of Ajay forever and would have to satisfy his lust.

vi. It is stated that as a result of the mental torture that was inflicted on the Petitioner, she was unable to register a complaint to the police immediately. It is stated that when the Petitioner was living

alone in Indrapuram, Ghaziabad, U.P. in 2011, Ajay found her address and started telling people that she was his wife. Further, he also consistently raped her and threatened her with a revolver and a knife. It is stated that in February 2011, the Petitioner became pregnant, and when Anil and Seema found out, they forcibly made the Petitioner ingest abortion pills and got her foetus aborted in April 2011.

- vii. It is stated that in order to prevent the Petitioner from initiating legal action, Ajay took the Petitioner to G.T. Road, Arya Samaj, Mandir in October 2011, and forged documents to showcase that he and the Petitioner were married. However, it is stated that Ajay, without informing the Petitioner, had married someone else on 30.06.2011.
- viii. It is stated that the threats continued and during a long period of time, Ajay would constantly keep the Petitioner as a hostage at their rented house at Indrapuram to satisfy his lust. It is stated that in July 2013, the Petitioner became pregnant again and Ajay forcefully made the Petitioner abort the child by giving her medicines.
- ix. It is stated that when the Petitioner's father became aware of the events that had happened to the Petitioner, he died of shock in November 2013. It is stated that during this time, Ajay along with the help of his wife took the Petitioner to Kanpur and raped her while his wife made a video of the same.
- x. It is stated that the accused Ajay, Anil and Seema and the wife of the accused, all compelled the petitioner to behave like a prostitute and continuously threatened to kill her if she ever complained to the

police. It is stated that Ajay, with the help of his wife, would portray to society that the Petitioner was his wife and would take her to various places like Kanpur, Indrapuram, Delhi and Rajasthan, and raped her. Further, it is stated that they would make audio recordings, video recordings, and these documents are available with the Petitioner as evidence. It is stated that Ajay, and his wife and Seema have destroyed all the evidence that was available with the Petitioner, including the mobile phone which has been allegedly broken by Ajay.

- xi. It is stated that the petitioner was taken to GTB Enclave in Delhi and kept at the house of an acquaintance where he would rape her continuously for days.
- xii. It is stated that besides these incidents, Ajay threatened the Petitioner and took her to Mathura, Vrindavan where, in the entry book, the Petitioner was mentioned as his wife. It is stated that they stayed there for two days and made physical relations. It is stated that the Petitioner believes that her life is in complete danger which is why she approached Police Station GTB Enclave for registration of a FIR under the appropriate provisions of the Indian Penal Code against the four accused.
- xiii. It is stated that in pursuance of this complaint dated 23.07.2019, the Petitioner approached Police Station GTB Enclave to register the FIR, but the police did not register FIR and she moved the Court of learned Metropolitan Magistrate by way of an application under Section 156(3) CrPC.
- xiv. The learned Metropolitan Magistrate directed the SHO to file

an action taken report as a result of which the Petitioner was then taken for a medical examination. It is stated that after getting the medical examination done, the Police Station GTB Enclave registered FIR bearing No.3/2019 dated 21.08.2019 under Sections 354, 376, 506 IPC. It is stated that in response to the application under Section 156(3) CrPC that had been filed by the Petitioner, the Police Station GTB Enclave stated that the case had been registered *vide* 'Zero FIR' and the investigation had been transferred to Police Station Indrapuram, Ghaziabad, Uttar Pradesh.

xv. Reply dated 11.09.2019 in response to the application under Section 156(3) CrPC was filed. It is stated that in the reply that the police had submitted that the offence had occurred in various places in U.P., and one incident was mentioned to have happened in Delhi at GTB Enclave at the house of the relative of the complainant.

xvi. It is stated that despite admission that one incidence had occurred within jurisdiction of GTB Enclave, Respondents No. 2 and 3 transferred the case to the Respondents No.4 and 5. It is stated that subsequently, the Petitioner moved an application before the concerned learned Metropolitan Magistrate on 12.09.2019 referring to the applicability of Section 178(d) Cr.P.C. seeking action for intentional non-registration of FIR and also calling for an explanation for unlawful transfer of the investigation despite having jurisdiction over the matter.

xvii. It is stated that despite another application dated 12.09.2019 preferred by the Petitioner seeking preservation of evidence and recording of the statement of the prosecutrix, Police Station GTB

Enclave did not make any endeavour to collect the evidence, preserve it or take the statement of the Petitioner, and rather chose to transfer the matter to the Respondents No.2 and 5. It is stated that the learned Metropolitan Magistrate *vide* Order dated 12.09.2019 called for the report from DCP Shahdara seeking an explanation for the transfer of the investigation despite admission that one incident had taken place within the jurisdiction of Police Station GTB Enclave.

xviii. It is stated that at the next hearing, DCP Shahdara submitted a report stating that as the time, date, place had not been explicitly mentioned by the Petitioner, the FIR could not be registered by Police Station GTB Enclave. Further, it was also contended that the Petitioner herein had not mentioned allegation of sexual assault in the GTB Enclave area during her counselling before the NGO Counsellor as well as her MLC before the doctor. It was submitted by DCP Shahdara that during the medical examination, the Petitioner had disclosed that the sexual intercourse had taken place in Indrapuram, Ghaziabad, U.P., and that an FIR No.199/2019 had already been registered at Police Station Indrapuram on 12.09.2019 under Sections 354, 376, 506 IPC.

xix. It is stated that the grievances of the Petitioner remain unsolved and the Petitioner has been subjected to a lot of threats from the accused due to which she has approached this Court seeking the aforementioned prayers.

3. Mr. R N Dubey, learned Counsel for the Petitioner, submits that despite the Petitioner having filed application for appropriate directions before the learned Trial Court, there has been a consistent adjournment of

the matter and the grievances of the Petitioner remain unsolved. Further, no proper reply has been furnished by Respondent No.2 to justify the reason for transfer of the investigation in violation of Section 178(d) Cr.P.C. as well as no explanation has been given for non-registration of FIR under the Sections stated in the application as well as the complaint dated 23.07.2019.

4. Learned Counsel for the Petitioner submits that from the date of registration of the FIR, the Petitioner had been receiving regular threats from the accused and such threats put the life of the Petitioner in danger. He further submits that the Police Station GTB Enclave, despite being legally under the obligation to conduct the investigation effectively, has unlawfully transferred the investigation to Respondent Nos.4 and 5. He submits that Respondent Nos.4 and 5, apart from registering the FIR under Sections 354, 376, 506 IPC, have not progressed forward with the investigation and that no officers of Respondent Nos.2 to 5 have explained to the Court as to why an FIR has not been registered under the relevant provisions of IPC.

5. The learned Counsel for the Petitioner submits that the learned Trial Court kept the matter pending without passing any appropriate order, thereby affecting the right to free and fair trial of the petitioner. Further, he submits that as a result of the constant threats from the accused, it has become difficult for the Petitioner to pursue the case. Mr. Dubey further submits that Respondent Nos.2 to 5 have not addressed the seriousness of the matter as to how the accused persons have spoiled the life of the Petitioner, and have committed heinous offences and are now threatening the Petitioner against taking appropriate actions.

6. Mr. Dubey, learned Counsel appearing for the Petitioner, relies upon the judgment of the Supreme Court in Rupali Devi v. State of Uttar Pradesh

& Ors., (2019) 5 SCC 384, stating that Respondent Nos.2 and 3 were obligated to register an FIR under the relevant provisions of the IPC so as to ensure an impartial investigation, thereby securing the life of the petitioner and her family members.

7. *Per contra*, at the outset, Ms. Richa Kapoor, learned ASC, submits that a similar petition had been filed before the learned Metropolitan Magistrate, Karkardooma Courts and that during the course of the hearing before the learned Metropolitan Magistrate, the Trial Court had disposed of the matter *vide* order dated 23.03.2021 wherein it had held that as per the directions of the Delhi High Court in Kirti Vashisht v. State & Ors., CRL.M.C.5933/2019, the Court was not empowered to direct Police Station GTB Enclave to conduct a parallel investigation or to transfer the investigation from Police Station Indirapuram to Police Station GTB Enclave. The learned Trial Court had further referred to Satvinder Kaur v. State (Govt. of NCT of Delhi) & Anr., (1999) 8 SCC 728 wherein the Supreme Court stated that at the stage of investigation, a criminal court could not have intervened into the territorial jurisdiction of the Police to investigate a case. Accordingly, the learned Trial Court noted that the Petitioner resided in Indirapuram, Ghaziabad, U.P. and not in Delhi, and, therefore, the investigation would be conducted by Police Station Indirapuram, and the complainant/Petitioner herein would have to approach the criminal court at Indirapuram, Ghaziabad for appropriate orders.

8. Ms. Kapoor further states that the complaint which had been sent by the Petitioner via Speed Post dated 26.07.2019 had been marked to the concerned IO for further necessary action. She submits that when the Petitioner was contacted and asked to join the inquiry, the Petitioner did not

respond to the calls and, to the request for inquiry, she stated that she was not feeling well and she would contact the Investigating Officer after recovery. Further, the Investigating Officer had also visited the house of the Petitioner, but the same was found locked. She further submits that during the medical examination, the Petitioner had informed the doctor that the last sexual relationship had taken place on 08.07.2019 in Indirapuram, Ghaziabad, U.P.

9. The learned ASC submits that despite the Petitioner stating that she had been sexually assaulted at GTB Enclave, she neither provided the address nor identified the place within the jurisdiction of Police Station GTB Enclave. Further, she did not even provide any time or date of the sexual assault. As a result of this, Police Station GTB Enclave registered a 'Zero FIR' being FIR No.3/2019 dated 21.08.2019 for offences under Sections 354, 376, 506 IPC. She submits that the same was transferred to Police Station Indirapuram, Ghaziabad through Superintendent of Police for registration of the case and subsequently FIR No.1999/2019 dated 12.09.2019 was registered at Police Station Indirapuram, Ghaziabad, U.P.

10. Heard Mr. R.N. Dubey, learned Counsel for the Petitioner, Ms. Richa Kapoor, learned ASC for the State, and perused the material on record.

11. Before delving into the issue at hand, it is pertinent to first note what exactly constitutes a 'Zero FIR'. As per Section 154 CrPC, if any information relating to the commission of any cognizable offence is received by a Police Station, the Police is duty bound to register the FIR. However, if the crime does not occur within the jurisdiction of the said Police Station, then after registration of the 'Zero FIR', the same has to be transferred to the concerned Police Station where the offence has indeed been committed.

Therefore, the place of crime and jurisdiction of the police station becomes irrelevant when a cognizable offence is disclosed, and the police station is obligated to instantly transfer the pertinent documents over to the police station vested with the jurisdiction which numbers the FIR and begins the investigation.

12. The provision of 'Zero FIR' came up as a recommendation in the Justice Verma Committee Report, in the new Criminal Law (Amendment) Act, 2013, after the horrendous *Nirbhaya* rape and murder case which took place in December 2012. The provision states: "A zero FIR can be filed by the victim, irrespective of their residence or place of occurrence of crime". In Lalita Kumar v. Govt. of U.P. & Ors., **AIR 2014 SC 187**, the Supreme Court also laid down that if a complaint is related to a cognizable offence, it is clear that as per Section 154 Cr.P.C., there has to be a mandatory registration of FIR.

13. The Supreme Court in State of Haryana & Ors. v. Bhajan Lal & Ors., **1992 Supp (1) SCC 335** while delving into the intricacies of the mandatory nature of Section 154 CrPC, observed as under :

" 31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to

suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “information” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “reasonable complaint” and “credible information” are used. Evidently, the non-qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. A comparison of the present

Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word “information” without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that ‘every complaint or information’ preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that ‘every complaint’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘complaint’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘information’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

14. From a combined reading of the provision and the precedents, it can be stated that the only difference between 'FIR' and 'Zero FIR' is that an FIR is registered where the incident has occurred within the jurisdiction of a particular Police Station, and a zero FIR can be lodged at any Police Station irrespective of where the incident has taken place. A zero FIR is admittedly

more efficient and is meant to provide quick redressal to the victim so that timely action can be taken after registration of the FIR. A glance through Circular 15/2019 by the Office of the Commissioner of Police, Delhi, dated 20.12.2019, issued in pursuance of instructions given by the Delhi High Court in Kirti Vashisht v. State of NCT of Delhi & Ors., [Writ Petition (Crl.) No. 5933/2019], also stipulates the directions that are to be followed with regard to a “Zero FIR”.

15. In the instant case, a perusal of the material on record showcases that one of the incidents of forceful sexual assault had taken place in the GTB Enclave area. As a corollary, the Police Station GTB Enclave was obligated to register an FIR and not a “Zero FIR”, and not delve into whether the Petitioner resided in the city or what was the specific time, date and place of the alleged incident. By embarking on the journey of trying to get the investigation transferred to Ghaziabad, U.P., Police Station GTB Enclave has displayed a failure in dispensation of their obligation to take into account the seriousness and gravity of the offence that has been disclosed by the Petitioner in the complaint. This Court finds it unfortunate that institutions that are supposed to protect the life and liberty of common citizens are quick to shirk their responsibilities. This invariably weakens the trust of common citizens that is imposed in these investigative agencies.

16. This Court finds it irrelevant that the Petitioner is not a resident of Delhi. It is of the opinion that the mere disclosure that one of the incidents had taken place within the vicinity of Police Station GTB Enclave was sufficient for an FIR to be registered at that Police Station, and not a Zero FIR as was done in the instance case. Failure to register a regular FIR costs precious time that could be utilised in conducting the investigation and can

also lead to destruction of important evidence.

17. With regard to the Order dated 20.03.2021, rendered by the Ld. Trial Court, this Court notes that the same has not been assailed in the present petition. Nevertheless, it is of the opinion that the Order of the Trial Court was given after the case had been transferred to Police Station, Indirapuram, Ghaziabad, and therefore, the Ld. Trial Court did not err in holding that it was not empowered to direct PS GTB Enclave to conduct a parallel investigation or to transfer the investigation from PS Indirapuram to PS GTB Enclave. However, as the instant petition has been filed under Section 482 Cr.P.C., the High Court has the inherent power to take the necessary action as sought for in this petition and direct for the registration of the FIR at PS GTB Enclave.

18. Accordingly, this Court finds strength in the contentions of the Petitioner herein, and is inclined to direct the respondents to register a regular FIR instead of a zero FIR and conduct investigation. Thereafter, consequently, Respondents No.4 & 5 are directed to hand-over the documents related to FIR No.199/2019 dated 12.09.2019 registered at Police Station Indirapuram under Sections 354/376/506 IPC to Respondents No.2 & 3 for conducting investigation.

19. The petition is disposed of with these observations, along with pending applications.

SUBRAMONIUM PRASAD, J

NOVEMBER 30, 2021

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